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RECORDATION NO. 10746 Filed 1425

August 15, 1979 AUG 15 1979 - 2 00 PM

INTERSTATE COMMERCE COMMISSION

3-227A203

No. 10746
Date AUG 15 1979
Fee \$ 50.00

Washington, D. C.

Hon. Agatha Mergenovich
Secretary
Interstate Commerce Commission
Room 2215
Washington, D.C. 20423

Dear Secretary Mergenovich:

I transmit herewith, for filing under 49 U.S.C. 11303, a Conditional Sale Agreement dated as of April 15, 1979 between Railroad Builders Inc. and Michigan Interstate Railway Company and an Agreement And Assignment between Railroad Builders Inc. and Citibank, N.A. dated as of the same date. Michigan Interstate Railway Company's address is P.O. Box 619, Owosso, Michigan 48867. Railroad Builders Inc. is located at 1601 West Nassau Avenue, Englewood, Colorado 80110.

The transaction involves the conditional sale of two (2) used 1600 HP turbo-charged RS-2 Diesel Electric Switching Locomotives from Railroad Builders Inc. to Michigan Interstate Railway Company. The vendor is simultaneously assigning its interest in the Conditional Sale Agreement to Citibank, N.A. The two locomotives now bear road numbers 301 and 305. Their serial numbers are 13932 and 12855.

Very truly yours,

Charles W. Chapman

Charles W. Chapman
Vice President & General Counsel
Michigan Interstate Railway Co.

cc: Jeffrey Oberg
Loren Hart
David Burlage
Vincent M. Malanaphy

Charles W. Chapman - Bernard L. Davis

Interstate Commerce Commission
Washington, D.C. 20423

8/15/79

OFFICE OF THE SECRETARY

Charles W. Chapman
Vice President & General Counsel
Obermayer, Rebmann, Maxwell & Hippel
Suite 500, 2011 I Street, N.W.
Washington, D.C. 20006

Dear

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/15/79 at 2:00pm, and assigned re-recording number(s).

10746

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

MICHIGAN INTERSTATE RAILWAY COMPANY hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment dated as of April 15, 1979.

MICHIGAN INTERSTATE RAILWAY
COMPANY

By W. F. M. McLaughlin
Title: Chairman and Chief
Executive Officer

NH 79-1419

10746

RECORDATION NO. Filed 1425

EXECUTION COPY

AUG 15 1979 -2 00 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of April 15, 1979

between

RAILROAD BUILDERS INC.

and

MICHIGAN INTERSTATE RAILWAY COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of April 15, 1979

between

RAILROAD BUILDERS INC.

and

CITIBANK, N.A.

CONDITIONAL SALE AGREEMENT dated as of April 15, 1979, between RAILROAD BUILDERS INC., a Colorado corporation (hereinafter called the "Vendor"), and MICHIGAN INTERSTATE RAILWAY COMPANY, a Michigan corporation (hereinafter called the "Railroad").

WHEREAS, the Vendor has agreed to sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule A hereto (hereinafter called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Definitions. (a) The term "Alternate Base Rate" means the fluctuating rate per annum as shall be in effect from time to time which rate per annum shall at all times be equal to the higher of:

(i) the base rate of Citibank, N.A. (the "Bank") on 90-day loans to responsible and substantial commercial borrowers in effect from time to time, or

(ii) 1/2 of one percent above the latest three-week moving average of secondary market morning offering rates in the United States for three-month certificates of deposit of major United States money market banks, such three-week moving average being determined weekly by the Bank on the basis of such rates reported by certificate of deposit dealers to and published by the Federal Reserve Bank of New York or, if such publication shall be suspended or terminated, on the basis of quotations for such rates received by the Bank from three New York certificate of deposit dealers of recognized standing, in either case adjusted to the nearest 1/4 of one percent or, if there is no nearest 1/4 of one percent, to the next higher 1/4 of one percent,

but in no event higher than the maximum rate permitted by law.

(b) The term "ICC", whenever used in this Agreement, means the Interstate Commerce Commission.

(c) The term "Operating Agreement", whenever used in this Agreement, means the Operating Agreement for Rail Service Continuation, effective October 1, 1977, between the Railroad and the Michigan State Transportation Commission (formerly, the Michigan State Highway Commission), as amended by an Amendment, dated January 25, 1979, and as the same may be amended or modified from time to time or as replaced by an agreement of similar import.

(d) The term "Subsidiary", whenever used in this Agreement, means a corporation of which the Railroad owns directly or indirectly 50% or more of the shares having the right to vote for the election of the Board of Directors of such corporation.

(e) All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistently applied, except as otherwise stated herein.

ARTICLE 2. Sale of Equipment. Pursuant to this Agreement, the Vendor will sell and deliver or cause to be delivered to the Railroad, and the Railroad will purchase from the Vendor and accept delivery of and pay for (as hereinafter provided), the Equipment. Said Equipment is sold by Vendor "AS IS".

ARTICLE 3. Inspection and Delivery. (a) The Vendor will deliver or cause to be delivered the Equipment in its entirety to the Railroad at the place specified in Schedule A hereto, in accordance with the delivery schedule set forth in Schedule A hereto; provided, however, that the Vendor shall not have any obligation to deliver the Equipment hereunder at any time after the commencement of any proceedings specified in clause (f) or (g) of Article 16 hereof or if any Event of Default (as defined in Article 16 hereof), or any event which with the lapse of time and/or demand could constitute such an Event of Default, shall have occurred.

(b) The Vendor's obligation as to time of delivery is subject, however, to delays resulting from causes beyond

the Vendor's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

(c) Notwithstanding the provisions of paragraph (b) of this Article 3, if the Equipment has not been delivered, accepted and settled for in its entirety pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4(e) hereof), this Agreement shall automatically terminate on the Cut-Off Date, with no other notice to such effect being hereunder required. If the Vendor's failure to deliver the Equipment resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept the Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when the Equipment shall be delivered by the Vendor, such payment to be in cash on the delivery of the Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to the Vendor.

(d) Prior to the delivery thereof, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and the Vendor shall grant to such authorized inspectors reasonable access to its plant. The Equipment shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of the Equipment, and if the Equipment conforms to the specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to the Vendor a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that the Equipment has been inspected and accepted on behalf of the Railroad and is marked in accordance with Article 7 hereof.

(e) On delivery of each such unit hereunder at the place specified for delivery in Schedule A hereto, the Railroad will assume the responsibility and risk of, and

shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit.

ARTICLE 4. Purchase Price and Payment. (a) The base price per unit of the Equipment, including freight and delivery charges to the place specified for delivery thereof, is set forth in Schedule A hereto. The term "Purchase Price" as used herein shall mean the aggregate base price of the Equipment.

(b) For the purpose of making settlement, the Equipment shall be delivered to and accepted by the Railroad in its entirety and not in groups of units thereof.

(c) The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at Citibank, N.A., 399 Park Avenue, New York, New York 10043, or at such place as the Vendor may designate, the Purchase Price of the Equipment in 96 equal, consecutive monthly installments, payable monthly on the first day of each month, commencing on August 1, 1979, to and including July 1, 1987; provided, however, that the last such installment shall be in the amount necessary to pay in full the unpaid portion of the Purchase Price.

(d) From and including the Closing Date (as defined in paragraph (e) below) until the payment in full thereof, the unpaid portion of the Purchase Price shall bear interest:

- (i) during each period during which the Railroad is subject to the Operating Agreement, at a fluctuating interest rate per annum (calculated on the basis of a year of 360 days for the actual number of days elapsed) equal to the Alternate Base Rate plus 1 1/2% per annum, and
- (ii) during each period during which the Railroad is not subject to the Operating Agreement, at a fluctuating interest rate per annum (calculated on the basis of a year of 360 days for the actual number of days elapsed) equal to the Alternate Base Rate plus 2 1/2% per annum.

Such interest shall be payable monthly, to the extent accrued, on the first day of each month, commencing August 1, 1979. If

any date for payment of principal or interest is not a business day, the payment otherwise payable on such date shall be payable on the next succeeding business day and interest shall accrue to such next succeeding business day.

(e) The term "Closing Date" with respect to the Equipment shall mean such date (on or after April 30, 1979, and prior to July 30, 1979 (July 30, 1979 being hereinafter called the Cut-Off Date)), not more than ten business days following presentation of an invoice by the Vendor to the Railroad and of the Certificate of Acceptance for the Equipment by the Railroad, as shall be fixed by the Railroad by written notice delivered to the Vendor at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York are authorized or obligated to remain closed.

(f) The Railroad will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the fluctuating interest rate then applicable under paragraph (d)(i) or (ii) (as the case may be from time to time) of this Article 4 plus 1% per annum.

(g) All payments provided for in this Agreement shall be made in immediately available funds and in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any installment of its indebtedness hereunder prior to the date it becomes due.

(h) In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross re-

ceipts (except gross receipts taxes in the nature of or in lieu of sales or use taxes), excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the interest or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Security Interest in the Equipment.

(a) The Vendor shall and hereby does retain a security interest in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment (except, in the case of locomotives, any communications, signal and automatic control equipment or devices having a similar use which have been added to any unit of Equipment by the Railroad the cost of which is not included in the Purchase Price of such unit

and which are not required for the operation or use of such unit by the ICC, the Department of Transportation or any other applicable regulatory body) and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

(b) Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (i) execute a bill or bills of sale for the Equipment transferring and releasing its interest therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof and (ii) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the release of the security interest of the Vendor in the Equipment. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. (a) The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed with the

Interstate Commerce Commission", or other appropriate markings approved by the Vendor with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

(b) Except as provided in the immediately preceding paragraph (a), the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences; Optional Prepayments. (a) In the event (any such occurrence being hereinafter called a Casualty Occurrence) that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise, or placed on Bad Order (as such term is understood by the railroad industry in the United States) for a consecutive period of 180 days or more, the Railroad shall promptly and fully inform the Vendor in regard thereto. Within sixty (60) days of the date of Casualty Occurrence, the Railroad shall pay to the Vendor a sum equal to the Casualty Value (as defined in paragraph (c) below) of such unit of the Equipment as of the date of such payment, together with interest thereon accrued to such date at the fluctuating rate then in effect from time to time pursuant to paragraph (d) of Article 4 hereof, and shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

(b) Any money paid to the Vendor pursuant to the preceding paragraph (a) of this Article 8 as Casualty Value shall be applied to the remaining installments of the Purchase Price in inverse order to the maturity thereof.

(c) The Casualty Value of each unit of the Equipment shall be deemed to be the unpaid Purchase Price in respect of such unit.

(d) In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Railroad, after payment by the Railroad of the Casualty Value of such Equipment, together with interest accrued thereon to the date of such payment, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

(e) The Railroad may, upon at least three business days' (as defined in Article 4(e) hereof) notice to the Vendor, prepay in whole or in part the then unpaid installments of the Purchase Price, together with interest on the amount prepaid accrued to the date of prepayment; provided, however, that each partial prepayment shall be in the amount of \$10,000 or an integral multiple thereof and shall be applied to the remaining installments of the Purchase Price in inverse order to the maturity thereof.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. (a) The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense and shall cause the design, quality and component parts of each unit of the Equipment to conform at all times to all Department of Transportation and ICC requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment.

(b) During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the ICC and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of

any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Representations and Warranties of the Railroad. The Railroad represents and warrants as follows:

(a) The Railroad is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Michigan.

(b) The execution, delivery and performance by the Railroad of this Agreement (i) are within the Railroad's corporate powers, (ii) have been duly authorized by all necessary corporate action, (iii) require no governmental approval (including, without limitation, the ICC or any state governmental authority regulating carriers) other than the approval of the Michigan Department of Transportation, which such approval shall have been obtained on or prior to June 15, 1979, and (iv) do not contravene law or any contractual restriction binding on the Railroad.

(c) This Agreement constitutes legal, valid and binding obligations of the Railroad enforceable against the Railroad in accordance with its terms.

(d) There are no pending or threatened actions or proceedings affecting the Railroad or any of its Subsidiaries before any court or governmental agency, which may materially adversely affect the financial condition or operations of the Railroad or any Subsidiary, other than proceedings pending in ICC Docket No. 37093 et al.

(e) The Operating Agreement is in full force and effect.

(f) The balance sheet of the Railroad and its Subsidiaries as at December 31, 1978 and the related statements of income and retained earnings of the Railroad and its Subsidiaries for the nine-month period then ended, copies of which have been furnished to the Vendor, fairly present the financial condition of the Railroad and its Subsidiaries as at such date and the results of the operations of the

Railroad and its Subsidiaries for the period ended on such date, all in accordance with generally accepted accounting principles consistently applied, and since December 31, 1978, there has been no material adverse change in such condition or operations.

ARTICLE 11. Possession and Use. The Railroad, so long as an Event of Default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through or similar agreements, from and after delivery of the Equipment by the Vendor to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 12. Certain Covenants. (a) So long as any amount of the Purchase Price shall remain unpaid, the Railroad will, unless the Vendor shall otherwise consent in writing:

(i) Compliance with Laws, Etc. Comply, and cause each of its Subsidiaries to comply, in all material respects with all applicable laws, rules, regulations and orders, such compliance to include, without limitation, paying before the same become delinquent all taxes, assessments and governmental charges imposed upon it or upon its property except to the extent contested in good faith.

(ii) Maintenance of Insurance. Maintain, and cause each Subsidiary to maintain, insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as are usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Railroad or such Subsidiary operates.

(iii) Preservation of Corporate Existence, Etc. Preserve and maintain, and cause each Subsidiary to preserve and maintain, its corporate existence,

rights, franchises and privileges in the jurisdiction of its incorporation, and qualify and remain qualified, and cause each Subsidiary to qualify and remain qualified, as a foreign corporation in each jurisdiction in which such qualification is necessary or desirable in view of its business and operations or the ownership of its properties.

(iv) Visitation Rights. At any reasonable time and from time to time, permit the Vendor or any agents or representatives thereof, to examine and make copies of and abstracts from the records (including, without limitation, records in respect of the Equipment) and books of account of, and visit the properties (including, without limitation, the Equipment) of, the Railroad and any of the Subsidiaries, and to discuss the affairs, finances and accounts of the Railroad and any of the Subsidiaries with any of their respective officers or directors.

(v) Keeping of Records and Books of Account. Keep, and cause each Subsidiary to keep, adequate records and books of account, in which complete entries will be made in accordance with generally accepted accounting principles consistently applied, reflecting all financial transactions of the Vendor and such Subsidiary.

(vi) Maintenance of Properties, Etc. Maintain and preserve, and cause each Subsidiary to maintain and preserve, all of its properties, necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted.

(vii) Cash. Maintain at least \$100,000 in cash or in (A) readily marketable direct obligations of the United States of America, (B) commercial paper rated A-1 or better by Moody's Investors Service, or P-1 or better by Standard & Poor's Corporation, or a similar rating by any similar organization which rates commercial paper, or (C) certificates of time deposit issued by commercial banks operating in the United States of America and having a net worth of at least \$100,000,000.

(viii) Working Capital. Maintain an excess of consolidated current assets over consolidated current liabilities of not less than \$250,000. Consolidated current liabilities shall include the current portion of the indebtedness evidenced hereby and of any other indebtedness maturing more than one year after the date of its creation.

(ix) Net Worth. Maintain an excess of consolidated total tangible assets over consolidated total liabilities of not less than \$250,000 during each period when the Railroad is subject to the Operating Agreement.

(x) Reports. Furnish to the Vendor:

(A) as soon as possible and in any event within 30 days after the end of each month, unaudited consolidated balance sheets of the Railroad and its Subsidiaries as of the end of such month and unaudited consolidated statements of income and retained earnings of the Railroad and its Subsidiaries for the month then ended, together with a statement from the Railroad to the effect that the Railroad is in compliance with the covenants set forth in this Article 12 and to the further effect that no Event of Default and no event, which with the giving of notice or the passing of time or both would constitute an Event of Default, has occurred and is continuing, certified in each case by the chief financial officer of the Railroad;

(B) as soon as available and in any event within 110 days after the end of each fiscal year of the Railroad, a copy of the annual audit report for such year for the Railroad and its Subsidiaries, certified in a manner acceptable to the Vendor by independent public accountants acceptable to the Vendor;

(C) promptly after an amendment to, or the giving or receiving of notice of the termination of, the Operating Agreement, furnish the Vendor with a copy of such amendment or notice;

(D) as soon as possible and in any event within 120 days after the end of each year, a copy of Form R-1 Annual Report required to be filed with the ICC in respect of such year, certified by an officer of the Railroad;

(E) prior to March 31 of each year, detailed income and cash flow projections for the Railroad and its Subsidiaries for the next fiscal year, certified by the chief financial officer of the Railroad;

(F) on or before March 31 of each year, a certificate of an officer of the Railroad certifying that, in the case of all Equipment repaired or repainted during the preceding 12 months, the numbers and markings required by Article 7 hereof have been preserved or replaced;

(G) within five days of the occurrence thereof, a statement as to each Event of Default and each event which with the giving of notice or the passage of time or both would constitute an Event of Default, together with information as to steps being taken by the Railroad to remedy such Event of Default or such event (as the case may be), certified by an officer of the Railroad;

(H) promptly after the sending or filing thereof, copies of all reports and registration statements which the Railroad or any Subsidiary files with the ICC, the Securities and Exchange Commission or any national securities exchange;

(I) promptly after the filing or receiving thereof, copies of all reports and notices which the Railroad or any Subsidiary files under the Employee Retirement Income Security Act of 1974 with the Pension Benefit Guaranty Corporation or the U.S. Department of Labor or which the Railroad or any Subsidiary receives from such Corporation; and

(J) such other information respecting the condition or operations, financial or otherwise, of the Railroad or any of its Subsidiaries as the Vendor may from time to time reasonably request.

(b) So long as any amount of the Purchase Price shall remain unpaid, the Railroad will not, without the written consent of the Vendor:

(i) Liens, Etc. Create or suffer to exist, or permit any of its Subsidiaries to create or suffer to exist, any lien, security interest or other charge or encumbrance, or any other type of preferential

arrangement, upon or with respect to any of its properties, whether now owned or hereafter acquired, or assign, or permit any of its Subsidiaries to assign, any right to receive income, in each case to secure any Debt (as defined in subparagraph (ii) of this paragraph) of any person or entity, other than (A) liens, security interests, other charges and preferential arrangements existing on the date hereof, (B) liens arising out of pledges or deposits under workmen's compensation laws, unemployment insurance, old age pensions or other social security or retirement benefits, or similar legislation, (C) purchase money liens or purchase money security interests upon or in any railroad cars or locomotives (excluding service and work equipment and cabooses) acquired by the Railroad or any Subsidiary in the ordinary course of business to secure the purchase price thereof or to secure indebtedness incurred solely for the purpose of financing the acquisition thereof, (D) the security interest in the Equipment created by this Agreement, or (E) liens or security interests existing on any railroad cars or locomotives (excluding service and work equipment and cabooses) at the time of its acquisition by the Railroad or any Subsidiary in the ordinary course of business.

(ii) Debt. Create or suffer to exist, or permit any of its Subsidiaries to create or suffer to exist, any Debt other than (A) Debt of the Railroad and its Subsidiaries existing on the date hereof, (B) Debt of the Railroad evidenced by this Agreement, (C) Debt incurred by the Railroad to finance the purchase of railroad cars and locomotives (excluding service and work equipment and cabooses), (D) Debt evidenced by leases permitted under subparagraph (iii) of this paragraph and (E) Debt of the Railroad to its shareholders which shall have been subordinated in right of payment, upon terms satisfactory to the Vendor, to all Debt of the Railroad hereunder to the Vendor. "Debt" of any person or entity means (x) indebtedness for borrowed money or for the deferred purchase price of property or services in respect of which such person or entity is liable, contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which such person or entity otherwise assures a creditor against loss, and (y) obligations under leases which shall have been or should be, in accordance with generally accepted accounting principles, recorded as capital leases in respect of which obligations such person or entity is liable, contin-

gently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such person or entity otherwise assures a creditor against loss.

(iii) Lease Obligations. Create or suffer to exist, or permit any of its Subsidiaries to create or suffer to exist, any obligations for the payment of rental for any property under leases or agreements to lease having a term of more than three years, other than leases of railroad cars or locomotives (excluding service and work equipment and cabooses).

(iv) Mergers, Etc. Merge into or consolidate with, or sell, assign, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to, any person, or permit any Subsidiary to do so, except that any Subsidiary may merge into or consolidate with or transfer assets to any other Subsidiary and except that any Subsidiary may merge into or transfer assets to the Railroad, provided in each case that, immediately thereafter and giving effect thereto, no event shall occur and be continuing which constitutes an Event of Default or which with the giving of notice or lapse of time or both would constitute an Event of Default and in the case of any such merger or consolidation to which the Railroad is a party, the Railroad is the surviving corporation.

(v) Sales, Etc. of Assets. Sell, assign, lease or otherwise dispose of, or permit any Subsidiary to sell, assign, lease or otherwise dispose of, any unit of the Equipment or all or a substantial part of its other assets, including its receivables, except in connection with a transaction authorized by subparagraph (iv) of this paragraph.

(vi) Investments in Other Persons. Make, or permit any Subsidiary to make, any loan or advance to any person (other than in the ordinary course of business); or purchase or otherwise acquire, or permit any Subsidiary to purchase or otherwise acquire, the capital stock, assets, or obligations of or any interest in, any person (other than (A) readily marketable direct obligations of the United States of America, (B) commercial paper rated A-1 or better by Moody's Investor Service, or P-1 or

better by Standard & Poor's Corporation, or a similar rating by any similar organization which rates commercial paper, and (C) certificates of time deposit issued by commercial banks operating in the United States of America and having net worths of at least \$100,000,000).

(vii) Change in Nature of Business. Make, or permit any Subsidiary to make, any material change in the nature of its business as carried on at the date hereof.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of a security interest in the Equipment, the use and operation thereof by the Railroad during the period when said security interest remains in the Vendor or the transfer of said security interest in the Equipment by the Vendor pursuant to any of the provisions of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. [Article 14 is intentionally deleted.]

ARTICLE 15. Assignments. (a) The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor.

(b) All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Vendor from, any of the obligations of the Vendor to prepare and deliver the Equipment in accordance with this Agreement or relieve the Railroad of any of its obligations to the Vendor under Articles 2, 3, 4, 5 and 13 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

(c) Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

(d) The Railroad recognizes that it is the custom of railroad equipment vendors to assign conditional sales agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebted-

ness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Vendor with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, not subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Vendor. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Vendor.

(e) The Railroad will (i) in connection with the settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (ii) furnish to such assignee such number of counterparts of any other certificate or document required by the Vendor as may reasonably be requested.

(f) In the event that on or prior to the Cut-Off Date this Agreement shall have been assigned by the Vendor and the assignee shall not make payment to the Vendor with respect to the Equipment as provided in the instrument making such assignment or such assignee shall not be obligated, pursuant to the terms of such instrument of assignment, to make such payment, the Vendor will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the Railroad will, not later than 90 days after the date such payment was due and prior to the Cut-Off Date, pay or cause to be paid to the Vendor the aggregate unpaid Purchase Price of the Equipment, together with interest from the date such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets in effect on the date such payment was due.

ARTICLE 16. Defaults. If any of the following events ("Events of Default") shall occur and be continuing, to wit:

(a) The Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any interest thereon or any other sum payable by the Railroad as provided in this Agreement when due; or

(b) Any representation or warranty made by the Railroad herein or by the Railroad (or any of its officers) in connection with this Agreement or the Operating Agreement shall prove to have been incorrect in any material respect when made; or

(c) The Railroad shall fail to perform or observe any other term, covenant or agreement contained in this Agreement or the Operating Agreement on its part to be performed or observed and any such failure shall remain unremedied for 10 days after written notice thereof shall have been given to the Railroad by the Vendor; or

(d) (i) The State of Michigan (the "State") shall fail to make any payment in accordance with the terms of the Operating Agreement, or (ii) any representation or warranty made by the State (or any of its officers or officials) in connection with the Operating Agreement shall prove to have been incorrect in any material respect when made, or (iii) the State shall fail to perform or observe any other term, covenant or agreement contained in the Operating Agreement or in the Rail Property Lease Agreement dated as of October 1, 1977 (the "RPL Agreement"), the Lease of Railroad Equipment, dated as of October 1, 1977 (the "Lease"), or the Conditional Option to Lease and Operate effective October 1, 1977 (the "Option"; together with the RPL Agreement and the Lease being the "Other Agreements") on its part to be performed or observed, or (iii) the Operating Agreement or any of the Other Agreements shall for any reason whatsoever fail to be in full force or effect or terminate except in accordance with the express terms thereof as originally executed; or the Michigan Department of Transportation shall not have approved this Agreement by July 15, 1979; or

²⁰ *ME*
 (e) The Railroad ²⁰ *ME* or any of its Subsidiaries shall (i) fail to pay any Debt (as defined in paragraph (b)(ii) of Article 12 hereof, but excluding Debt evidenced by or arising from this Agreement) of the Railroad or such Subsidiary (as the case may be), or any interest or premium thereon, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise)

and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt or (ii) fail to perform any term, covenant or condition on its part to be performed under any agreement or instrument relating to any such Debt, when required to be performed, and such failure shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such failure to perform is to accelerate, or to permit the acceleration of, the maturity of such Debt; or any such Debt shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; or

(f) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(g) Any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not

continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(h) The Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(i) Any change in the ownership of the Railroad, as existing on the date hereof, without the written consent of the Vendor; or

(j) Prior to the 90th day after the expiration or termination of the Operating Agreement, the Railroad and the Vendor shall not have amended this Agreement to provide for a new covenant (i) in respect of the maintenance by the Railroad of a consolidated net worth in an amount satisfactory to the Vendor or (ii) in respect of the maintenance by the Railroad of a ratio satisfactory to the Vendor of the aggregate Debt of the Railroad and its Subsidiaries to the consolidated net worth of the Railroad and its Subsidiaries;

then at any time after the occurrence of such an Event of Default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4(f) hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price

of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

The Vendor may at its election waive any such Event of Default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such Event of Default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. (a) At any time during the continuance of a Declaration of Default, the Vendor may take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

(b) In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (i) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (ii) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

(c) At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

(d) At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or

private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract of such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorney's fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

(e) Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

(f) Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

(g) If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate or rates per annum set forth in Article 4 hereof, applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

(h) The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

ARTICLE 18. Applicable State Laws. (a) Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without

modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

(b) Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, or its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Vendor) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place

of business at the following specified addresses:

(a) to the Railroad, at P.O. Box 619, Owosso, Michigan 48867

(b) to the Vendor, at 1601 West Nassau Avenue, Englewood, Colorado 80110, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Headings; Effect and Modification of Agreement. (a) All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(b) This Agreement, including Schedule A hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The Railroad warrants that its chief place of business and its executive offices are located in the state specified in clause (a) of Article 21 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof, as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract,

which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

ARTICLE 25. Non-Discrimination. The Railroad hereby agrees to comply with the state and federal non-discrimination clauses as set forth in Appendices A and B attached hereto and made a part hereof.

ARTICLE 26. Conflict of Interests. The Railroad hereby agrees that no director, officer or employee of the Railroad during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds hereof.

ARTICLE 27. Record-Keeping. The Railroad hereby agrees that it shall retain all records related to this Agreement on file for a period of not less than four years following expiration of the Operating Agreement.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

MICHIGAN INTERSTATE RAILWAY
COMPANY

By Vincent M. McLaughlin
Title: Chairman and Chief
Executive Officer


[CORPORATE SEAL]

Attest:

Melody L. Long
Secretary

<p>APPROVED Director, Michigan Department of Transportation Date <u>7/16/79</u></p>
--

RAILROAD BUILDERS INC.

By 
Title: *President*

[CORPORATE SEAL]

Attest:

CC Harrison
Assistant Secretary

State of Michigan)
) ss.:
County of Shiawassee)

On this 28th day of June, 1979, before me personally appeared Vincent M. Malanaphy, to me personally known, who, being by me duly sworn, says that he is Chairman of the Board of Directors and Chief Executive Officer of MICHIGAN INTERSTATE RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Melody Lee King
Notary Public

[Notarial Seal]

My Commission expires

January 4, 1982

State of Colorado:)
) ss.:
County of Arapahoe)

On this 23rd day of July, 1979, before me personally appeared Kenneth D. Chiodo, to me personally known, who, being by me duly sworn, says that he is President of RAILROAD BUILDERS INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Judi L. Klein
Notary Public

[Notarial Seal]

My Commission expires

My commission expires Mar. 2, 1982

SCHEDULE A

<u>MANUFACTURER:</u>	American Locomotive Company
<u>VENDOR:</u>	Railroad Builders Inc.
<u>DESCRIPTION OF EQUIPMENT:</u>	1600 HP Turbo-charged RS-2 Diesel Electric Switching Locomotives
<u>QUANTITY:</u>	2
<u>UNIT BASE PRICE:*</u>	\$67,503
<u>TOTAL BASE PRICE:</u>	\$135,006
<u>ROAD NUMBERS:</u>	301 and 303
<u>SERIAL NUMBERS:</u>	13932 and 12855
<u>ESTIMATED TIME AND PLACE OF DELIVERY:</u>	On or about May 1, 1979, but in any event not later than July 30, 1979, at Snowflake, Arizona

*Includes \$12,003 freight charges and \$5,000 parts.

PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract, the contractor agrees as follows:

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Breach of this covenant may be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinbefore set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, age, sex, height, weight or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight or marital status.
5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.
6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.
7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission, and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Civil Rights Commission* finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated, and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.
9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or subcontractor or seller.

APPENDIX B

AFFIRMATIVE ACTION

Section 1. Definitions

As used in this Appendix:

- (a) "Act" means the Railroad Revitalization and Regulatory Reform Act of 1976 (P.L. 94-210)
- (b) "Administrator" means the Federal Railroad Administrator or his delegate.
- (c) "Affirmative action program" means the program described in Sections 265.9 through 265.15 of 49 CFR Part 265.
- (d) "Agency" means the Federal Railroad Administration.
- (e) "Contractor" means a prime contractor or a sub-contractor who will be paid in whole or in part directly or indirectly from financial assistance under the Rail Acts.
- (f) "Minority" means women, Blacks, Hispanic Americans, American Indians, American Eskimos, American Orientals and American Aleuts.
- (g) "Rail Acts" means the Act and the provisions of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and the Rail Passenger Service Act (45 U.S.C. 501 et seq.) amended by the Act.
- (h) "Regulations" means the Regulations relative to non-discrimination in Federally-assisted programs of the DOT Title 49, CFR, Part 21, as they may be amended from time to time.
- (i) "Subsidizer" means Michigan State Transportation Commission through the Michigan Department of Transportation.

Section 2. Affirmative Action Requirements

In connection with the performance of rail freight services under this Agreement, the Contractor agrees as follows:

- (a) The Contractor shall comply with the Regulations, which are herein incorporated by reference and made a part of this Agreement.
- (b) The Contractor, with regard to the work performed by it under this Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (c) In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of its obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(d) The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Subsidizer or the Agency to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Subsidizer or to the Agency, whichever is appropriate, and shall set forth what efforts it has made to obtain the information.

(e) In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the Subsidizer shall impose such contract sanctions as it or the Agency may determine to be appropriate, including but not limited to:

- (1) Withholding of payments to the Contractor under this Agreement until it complies; and/or
- (2) Cancellation, termination or suspension of this Agreement in whole or in part.

(f) The Contractor shall include the provisions of paragraphs (a) through (e) in every subcontract, including procurement of materials and lease of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Subsidizer or the Agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Subsidizer to enter into such litigation to protect the interests of the Subsidizer and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(g) The Contractor shall comply with all applicable provisions of the Rail Acts, Regulations of the Office of the Secretary of Transportation, 49 CFR 1.49 (u), Public Law No. 94-210 (90 Stat. 31), and Section 905 of the Act.

(h) As a condition to receiving Federal financial assistance under the Act or the provisions of the Rail Acts, the Contractor hereby agrees to observe and comply with the following:

(1) No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under, any project, program or activity funded in whole or in part through such assistance.

(i) The following specific discriminatory actions are prohibited:

(1) The Contractor under any projects, program or activity to which these clauses apply shall not, directly or through contractual or other arrangements, on the ground of race, color, national origin, or sex:

(A) Deny a person any service, financial aid, or other benefit provided under such project, program or activity;

(B) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under such project, program or activity;

(C) Subject a person to segregation or separate treatment in any matter related to their receipt of any service, financial aid or other benefit under such project, program or activity;

(D) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid or other benefit under such project, program or activity; or

(E) Deny a person an opportunity to participate in such project, program or activity through the provision of services or otherwise or afford them an opportunity to do so which is different from that afforded others under such project, program or activity.

(2) The Contractor in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such project, program or activity or the class of persons to whom, or the situations in which such services, financial aid, other benefits, or facilities will be provided under any such project, program or activity, or the class of persons to be afforded an opportunity to participate in any such project, program, or activity shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the project, program or activity with respect to individuals of a particular race, color, national origin or sex.

(3) In determining the site or location of facilities, the Contractor shall not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any project, program, or activity to which these clauses apply on the grounds of race, color, national origin or sex, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of these clauses.

(4) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, national origin or sex. Except as otherwise required by the regulations or orders of the Administrator, the Contractor shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, national origin or sex. Such action shall include, but not be limited to the following: employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment notices to be provided by the agency's representative setting forth the provisions of these non-discrimination clauses. The Contractor understands and agrees that it shall not be an excuse for failure to provide affirmative action that the labor organizations with which the Contractor has a collective bargaining agreement failed or refused to admit or qualify minorities for admission to the union, or that the provisions of such agreements otherwise prevent the Contractor from implementing its affirmative action program.

(5) The Contractor shall not discriminate against any business organization in the award of any contract because of race, color, national origin or sex of its employees, managers or owners. Except as otherwise required by the regulations or orders of the Administrator, the Contractor shall take affirmative action to insure that business organizations are permitted to compete and are considered for awards of contracts without regard to race, color, national origin or sex.

(j) As used in these clauses, the services, financial aid, or other benefits provided under a project, program or activity receiving financial assistance under the Rail Acts include any service, financial aid, or other benefit provided in or through a facility funded through financial assistance provided under the Rail Acts.

(k) The enumeration of specific forms of prohibited discrimination does not limit the generality of prohibition in paragraph (h) (1) of this Section.

(l) These clauses do not prohibit the consideration of race, color, national origin or sex if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the Contractor's operations or activities on the grounds of race, color, national origin or sex. Where prior discriminatory or other practice or usage tends on the grounds of race, color, national origin or sex, to exclude individuals or businesses from participation in, to deny them the benefits of, or subject them to discrimination under any project, program or activity to which these clauses apply, the Contractor must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage to which this part applies, the Contractor is expected to take affirmative action to insure that no person is excluded from participation in or denied the benefits of the project, program or activity on the grounds of race, color, national origin or sex, and that minorities and minority businesses are afforded a reasonable opportunity to participate in employment and procurement opportunities that will result from financial assistance provided under the Rail Acts.

(m) The Contractor agrees to take such actions as are necessary to monitor its activities and those of its contractors who will be paid in whole or in part with funds provided by the Rail Acts, or from obligations guaranteed by the administrator pursuant to the Rail Acts, except obligations guaranteed under section 602 of the Rail Passenger Service Act, in order to carry out affirmatively the purposes of paragraph (h) above, and to implement the affirmative action program developed and implemented pursuant to 49 CFR 265.

(n) The Contractor shall, in all advertisements for employees, or solicitations for services or materials from business organizations placed by or on behalf of the recipient, in connection with any project, program or activity funded in whole or in part with financial assistance under the Rail Acts, state that all applicants for employment will receive consideration for employment, and all business organizations will receive consideration for an award of a contract without regard to race, color, national origin or sex.

(o) The Contractor shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency's representative, advising the labor organization or worker's representative of the Contractor's commitments under Section 903 of the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(p) The Contractor shall comply with all provisions of Section 905 of the Act, the Civil Rights Act of 1964, any other Federal civil rights act and with the rules, regulations, and orders issued under such acts.

(q) The Contractor shall furnish all information and reports required by the rules, regulations, and orders of the Administrator, and will permit access to its books, records, and accounts by the Administrator for purposes of investigation to ascertain compliance with rules, regulations, and orders referred to in paragraph (p) hereof.

(r) The Contractor shall furnish such relevant procurement information not included in its affirmative action program, as may be requested by the Minority Business Resource Center. Upon the request of the Contractor, the Minority Business Resource Center shall keep such information confidential to the extent necessary to protect commercial or financial information or trade secrets to the extent permitted by law.

(s) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement, or with the provisions of Section 905 of the Act, the Civil Rights Act of 1964, or with any other Federal civil rights act, or with any rules, regulations, or orders issued under such acts, this Agreement will, after notice of such noncompliance, and after affording a reasonable opportunity for compliance, be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Federal financial assistance in accordance with procedures authorized in Section 906 of the Act, or as otherwise provided by law.

(t) The Contractor shall not enter into any contract or contract modification whether for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, or for construction, in connection with a project, program or activity which receives financial assistance under the Rail Acts with a contractor debarred from or who has not demonstrated eligibility for Federal or federally assisted contracts, and will carry out such sanctions and penalties for violation of this part as may be imposed upon contractors and subcontractors by the Administrator or any other authorized Federal official. The Contractor shall insure that the clauses required by Section 4 of this Appendix implementing Executive Order No. 11246 will be placed in each non-exempt federally assisted construction contract.

(u) The Contractor agrees to comply with and implement the written affirmative action program as approved by the Administrator pursuant to Section 265.17 of Title 49 CFR.

(y) The Contractor agrees to notify the Administrator promptly of any law suit or complaint filed against the recipient alleging discrimination on the basis of race, color, national origin or sex.

(w) The Contractor shall include the preceeding provisions of paragraphs (h) through (v) in every contract or purchase order, whether for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, or for construction relating to project, programs or activities financed in whole or in part under the Rail Acts. The Contractor shall cause each such contractor or vendor to include the provisions of paragraphs (h) through (v) in every subcontract. The Contractor will take such action with respect to any such contract or purchase order as the Administrator may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Administrator, the Contractor may request the United States to enter into such litigation.

Section 3. Affirmative Action Programs

(a) General. A prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority employment and utilization of minority employment and utilization of minority businesses, and an evaluation of opportunities for utilization of minority group personnel and minority businesses. Therefore, an affirmative action program to guarantee employment and contractual opportunities shall provide for specific actions keyed to the problems and needs of minority persons and minority businesses including, where there are deficiencies based on past practices, and with respect to future plans for hiring and promoting employees or awarding contracts, the development of specific goals and timetables for the prompt achievement and maintenance of full opportunities for minority persons and minority businesses with respect to programs, projects and activities subject to this part.

(b) Employment practices

(1) The affirmative action program for employment showing the level of utilization of minority employees, and establishing a plan to insure representative opportunities for employment for minority persons shall be developed in accordance with the regulations of the Department of Labor at 41 CFR 60-2.

(2) Railroad applicants or recipients shall develop their program for each establishment in their organization and by job categories in accordance with the requirements of the Joint Reporting Committee of the Equal Employment Opportunity Commission and the Department of Labor. Other applicants recipients or contractors may use any program format or organization which has been approved for use by other Federal agencies enforcing equal opportunity laws.

(3) The affirmative action program shall show the source of statistical data used.

(4) The affirmative action program shall include a listing by job category of all jobs which may be established or filled by the applicant, recipient or contractor as a result of the project, program or activity funded by federal financial assistance under the Rail Acts for the first five (5) years of such project, program or activity or the period during which such project, program, or activity will be undertaken, whichever is the lesser ("program period").

(5) The affirmative action program shall set forth in detail a plan to insure that with respect to the project, program, or activity financed in whole or in part through financial assistance under the Rail Acts, minority persons have an opportunity to participate in employment in proportion to the percentage of the minority work force in the area where the applicant's, recipient's or contractor's operations are located as compared to the total work force, and that such minority persons have an equal opportunity for promotion or upgrading. Where appropriate because of prior underutilization of minority employees, the program shall establish specific goals and timetables to utilize minority employees in such projects, programs or activities in the above-mentioned proportion.

(c) Contracts

(1) The affirmative action program shall include details of proposed contracts in excess of Ten Thousand Dollars (\$10,000.00) to be awarded in connection with projects, programs, and activities funded in whole or in part through financial assistance under the Rail Acts, including contracts for professional and financial services, for the program period. The details shall include a description of the services or products which will be sought including estimated quantities, the location where the services are to be provided, the manner in which proposals will be solicited (e.g., cost plus fixed fee, fixed price), the manner in which contracts will be awarded (e.g., competitive or sole source). The plan shall also give details as to bidding procedures and information as to other qualifications for doing business with the applicant, recipient or contractor. Upon request by the applicant, recipient or contractor, any information submitted to the Administrator shall be kept confidential to the extent permitted by law.

(2) The affirmative action program shall review the procurement practices of the applicant, recipient or contractor for the full year preceeding the date of the submission of the affirmative action program and evaluate the utilization of minority business in its procurement activities. Such evaluation of utilization of minority business shall include the following:

(i) An analysis of awards of contracts to minority businesses during such year describing the nature of goods and services purchased and the dollar amount involved; and

(ii) A comparison of the percentage of awards of contracts to minority businesses (by number of contracts and by total dollar amount involved) to the total procurement activity of the applicant, recipient or contractor for said year.

(3) The affirmative action program shall set forth in detail the applicant's, recipient's or contractor's plan to insure that minority businesses are afforded a fair and representative opportunity to do business with the applicant, recipient or contractor (both in terms of number of contracts and dollar amount involved) for the program period. Such plan shall identify specific actions to be taken to:

(i) Designate a liaison officer who will administer the minority business program;

(ii) Provide for adequate and timely consideration of the availability and potential of minority businesses in all procurement decisions;

(iii) Assure that minority businesses will have an equitable opportunity to compete for contracts, by arranging solicitation time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of minority businesses who are potential contractors in preparing bid materials and in obtaining and maintaining suitable bonding coverage in those instances where bonds are required;

(iv) Maintain records showing that the policies set forth in this part are being complied with;

(v) Submit quarterly reports of the records referred to in subparagraph (iv) above in such form and manner as the Administrator may prescribe; and

(vi) Where appropriate because of prior underutilization of minority businesses, establish specific goals and timetables to utilize minority businesses in the performance of contracts awarded.

(d) Successor organizations. Where applicant, recipient or contractor is a successor organization, its affirmative action program shall review the hiring and procurement practices of its predecessor organizations.

Section 4. Equal Opportunity Clause

During the performance of this Agreement the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Subsidizer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) of this Section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Subsidizer may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Subsidizer, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

AGREEMENT AND ASSIGNMENT

Dated as of April 15, 1979

between

RAILROAD BUILDERS INC.

and

CITIBANK, N.A.

AGREEMENT AND ASSIGNMENT, dated as of April 15, 1979, between CITIBANK, N.A. (hereinafter called the Assignee), and RAILROAD BUILDERS INC. (hereinafter called the "Vendor").

WHEREAS, the Vendor and Michigan Interstate Railway Company (hereinafter called the "Railroad"), have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the "Conditional Sale Agreement"), covering the sale and delivery, on the conditions therein set forth, by the Vendor and the purchase by the Railroad of the railroad equipment described in Schedule A to the Conditional Sale Agreement (said equipment being hereinafter called the "Equipment");

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this "Assignment") WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Vendor, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Vendor hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Vendor in and to each unit of Equipment when and as delivered to and accepted by the Railroad, and when and as the amount required to be paid for such unit is paid to the Vendor by the Assignee pursuant to Section 4 hereof;

(b) all the right, title and interest of the Vendor in and to the Conditional Sale Agreement (except the right to deliver the Equipment and the right to receive the payments specified in Article 3(c) thereof and in Article 15(f) thereof and reimbursements for taxes paid or incurred by the Vendor as provided in Article 5 thereof and remedies pertaining to the foregoing exceptions, which remedies shall not include the security interest of the Vendor with respect to units of Equipment subsequent to delivery by the Vendor of a bill of sale for such units against payment therefor pursuant to an initial invoice therefor

as specified by Section 4 hereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Vendor under the Conditional Sale Agreement in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the Vendor's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse against the Vendor for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer or pass, or in any way affect or modify, the liability of the Vendor to deliver the Equipment in accordance with the Conditional Sale Agreement or relieve the Railroad from its obligations to the Vendor contained or referred to in Articles 2, 3, 4, 5 and 13 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Vendor to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Vendor. In furtherance of the foregoing assignment and transfer, the Vendor hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Vendor, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Vendor agrees that it will deliver the Equipment to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Vendor. The Vendor further agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and other than the rights of the Assignee under this Agreement); and the Vendor further agrees that it will defend the title to each unit of the Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Vendor under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Vendor will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 19 of the Conditional Sale Agreement have been effected.

SECTION 3. The Vendor agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Vendor will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Vendor of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Vendor. The Vendor's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, set-off, counterclaim or recoupment asserted by the Railroad

in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Vendor of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Vendor the right, at the Vendor's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment. ~~The Vendor agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expense, including royalty payments and counsel fees, if any, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Vendor of any such liability or claim actually known to the Assignee and will give the Vendor the right, at the Vendor's expense, to compromise, settle or defend against such claim.~~ The Vendor agrees that any amounts payable to it by the Railroad with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on the Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement, shall pay to the Vendor an amount equal to the Purchase Price of the Equipment as shown on the invoice, provided that a there shall have been delivered to the Assignee, as provided in Article 15 of the Conditional Sale Agreement, at least five business days (as defined in said Article 4) prior to the Closing Date, the following documents, in the form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill of sale from the Vendor to the Assignee transferring to the Assignee all right, title and interest of the Vendor in the units of the Equipment, warranting to the Assignee and to the Railroad that at that time of delivery of such units

under the Conditional Sale Agreement the Vendor had legal title to such units and good and lawful right to sell such units and that such units were free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and other than the rights of the Assignee under this Assignment), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Vendor under the Conditional Sale Agreement;

(b) a Certificate of Acceptance with respect to the units of the Equipment as contemplated by Article 3 of the Conditional Sale Agreement;

(c) an invoice of the Vendor for the units of the Equipment, accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(d) an opinion of counsel for the Railroad, dated as of the Closing Date, to the effect that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and the Vendor and is a legal, valid and binding instrument, enforceable in accordance with its terms, (iii) the Assignee has a valid and perfected security interest in the units of the Equipment and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and other than the rights of the Assignee

under this Assignment), (iv) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Conditional Sale Agreement or this Assignment, or if any such authority is necessary, it has been obtained, and (v) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303 and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee;

(e) an opinion of counsel for the Vendor, dated as of the Closing Date, to the effect that (i) the Vendor is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Vendor and, assuming due authorization, execution and delivery by the Railroad, is a legal and valid instrument binding upon the Vendor and enforceable against the Vendor in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Vendor and, assuming due authorization, execution and delivery by the Assignee, is a legal and valid instrument binding upon the Vendor, (iv) the Vendor has transferred to the Assignee all the rights, titles, interests, powers and privileges purported to be assigned to the Assignee by this Assignment and (v) the bill of sale referred to in subparagraph (a) of this paragraph has been duly authorized, executed and delivered by the Vendor and is valid and effective to transfer all right, title and interest of the Vendor in and to the units of Equipment to the Assignee, free

from all claims, liens, security interests and other encumbrances of any nature (other than those created by the Conditional Sale Agreement and other than the rights of the Assignee under this Agreement) arising from, through or under the Vendor;

(f) an opinion of Messrs. Shearman & Sterling, counsel for the Assignee, dated as of such Closing Date, to the effect that the Conditional Sale Agreement and this Assignment are in substantially acceptable legal form, and the documents furnished at the Closing Date are substantially responsive to the requirements of this Section 4;

(g) a certificate of an officer of the Railroad, dated as of the Closing Date, to the effect that (i) the representations and warranties contained in Article 10 of the Conditional Sale Agreement are correct on and as of the Closing Date as though made on and as of the Closing Date, (ii) no Event of Default (as defined in the Conditional Sale Agreement), or event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an Event of Default, shall have occurred and be continuing and (iii) no tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) have been filed and are currently in effect which would adversely affect the security interest of the Assignee in the Equipment; and

(h) a receipt from the Vendor for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4), if any, required to be made on the Closing Date to the Vendor with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally; in giving the opinion specified in said subparagraphs (d) and (f),

counsel may rely on the opinion of counsel for the Vendor as to authorization, execution and delivery by the Vendor of the documents executed by the Vendor and as to title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement; in giving the opinion specified in said paragraph (f), counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Vendor or the opinion of counsel for the Railroad as to such matter.

The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (f) or (g) of Article 16 of the Conditional Sale Agreement or if an Event of Default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an Event of Default, shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Assignee shall not make payment for the Equipment, the Assignee shall reassign to the Vendor, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Vendor hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, insofar as the Vendor is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will, subsequent to payment by the Assignee to the Vendor of the amounts required to be paid under Section 4 hereof, execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Vendor therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the Conditional Sale Agreement.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

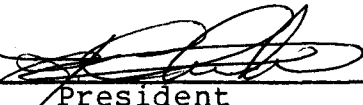
SECTION 9. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due authority, have caused this instrument to be

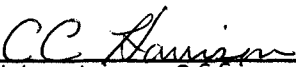
executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

RAILROAD BUILDERS INC.

[Corporate Seal]

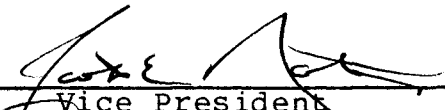
By 
President

Attest:


Attesting Officer

CITIBANK, N.A.

[Corporate Seal]

By 
Vice President

Attest:


Account Officer

STATE OF COLORADO)
) SS.:
COUNTY OF Arapahoe

On this 23 day of July 1979, before me personally appeared Kenneth J. Chasco, to me personally known, who, being by me duly sworn, says that he is a President of RAILROAD BUILDERS INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Judi L. Kline
Notary Public

[Notarial Seal]

My Commission expires My commission expires Mar. 2, 1982

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On this 14 day of August 1979, before me personally appeared Scott E. Bates, to me personally known, who, being by me duly sworn, says that he is a Vice President of CITIBANK, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Louise Dellasala
Notary Public

[Notarial Seal]

My Commission expires

LOUISE DELLASALA
Notary Public, State of New York
No. 01DE4671239
Qualified in Kings County
Commission Expires March 30, 1980